

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:11-CR-117-BR

UNITED STATES OF AMERICA

v.

BRENDON EVAN HOLE

ORDER

This matter is before the court on defendant's two, virtually identical *pro se* motions to reduce his sentence pursuant to 18 U.S.C. § 3582. (DE ## 59, 60.)

Defendant contends that "due to the newly passed law affording two (2) point reduction, [his] guide line range is no longer 70-87, but is now 57-71 months." (DE # 59, at 1.) The court presumes defendant relies on the recent amendment to the sentencing guidelines, Amendment 782, which generally reduces by two levels the offense levels in U.S.S.G. § 2D1.1(c)'s Drug Quantity Table.¹ But, defendant's offense level was not based on § 2D1.1(c) because he was not convicted of a drug trafficking offense. Rather, it was based on § 2K2.1 because he was convicted of two counts of being a felon in possession of firearm.² (PSR, DE # 37, ¶ 55.) Therefore, Amendment 782 has no effect on defendant's guideline imprisonment range, and the court is not authorized to reduce his sentence under 18 U.S.C. § 3582(c)(2), see

¹ This amendment is applied retroactively; however, the effective date of any court's order reducing a term of imprisonment based on the amendment must be 1 November 2015 or later. U.S.S.G. § 1B1.10, comment. (n.6) (2014).

² Although § 2K2.1 has also recently been amended, the amendment clarifies how the four-level enhancement under subsection (b)(6)(B) applies, see U.S.S.G., App. C., Supp., Amend. 784, and it does not apply retroactively, see U.S.S.G. § 1B1.10(d) (2014).

United States v. Munn, 595 F.3d 183, 187 (4th Cir. 2010) (“[A] reduction under § 3582(c)(2) ‘is not authorized’ if an amendment ‘does not have the effect of lowering the defendant’s applicable guideline range.’” (citations omitted)).

The motions are DENIED.

This 30 March 2015.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge